

H

Notice of Allowability

Application No.

10/694,510

Examiner

Melanie J. Hand

Applicant(s)

BREZNOCK ET AL.

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to papers filed 4/30/07.
2. ☒ The allowed claim(s) is/are 9-15, 21-23, 25, 27 and 29-36.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date <u>20070731</u> . |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____ |

EXAMINER'S COMMENT

Response to Arguments

Applicant's arguments, see Remarks, filed April 30, 2007, with respect to the rejection of claims 9-11, 13-15, 21-23, 25, 27, 29-31 and 33-36 under 35 U.S.C. 102 and claims 12 and 32 under 35 U.S.C. 103 have been fully considered and are persuasive. The rejections have been withdrawn.

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Jay Lenker on July 23, 2007. It is noted here that the word "tapered" was present in the claims as originally filed and amended herein and will remain in the claims, which differs slightly from the proposed amendment discussed with Mr. Lenker in said interview in which the Office proposed that the word "tapered" be removed (see attached form PTO-413B). Authorization for any other changes to the claims herein were authorized in said telephone interview.

The application has been amended as follows:

9. A method of draining of fluid, air and contaminants from a thoracic cavity of a mammalian patient comprising: inserting a tapered blunt tip of a flexible trocar and a distal end of an axially elongate tube into an incision into a thoracic cavity of a

Art Unit: 3761

mammalian patient, wherein the flexible trocar is pre-inserted through a drainage lumen of a pre-attached, bidirectional, non-removable valve attached to a proximal end of the axially elongate tube and through a drainage lumen of the axially elongate tube and extends substantially the length of the axially elongate tube; selectively bending a region near the distal tip of the axially elongate tube while advancing the axially elongate tube into the thoracic cavity, wherein the bending steers the axially elongate tube into the thoracic cavity during insertion; removing the flexible trocar through the valve from the drainage lumen of the axially elongate tube and the drainage lumen of the valve; and selectively opening or closing the valve to control influx and efflux of fluid, air or contaminants into the thoracic cavity through the drainage lumen of the axially elongate tube.

13. The method of Claim 9 wherein the step of selectively bending a region near the distal tip of the axially elongate tube is replaced by the steps of: inserting a hollow needle into the thoracic cavity; inserting a guidewire through the hollow needle into the thoracic cavity; removing the hollow needle following placement of the guidewire; advancing the chest drainage tube, comprising a flexible trocar, further comprising a tapered, blunt distal tip and a guidewire lumen extending the length of the trocar, into the thoracic cavity over the guidewire; and removing the trocar.

21. A method of draining of fluid, air and contaminants from a patient's thoracic cavity comprising: inserting a hollow needle into an incision into the thoracic cavity of a patient; inserting a guidewire through the hollow needle into the thoracic cavity; removing the hollow needle after inserting the guidewire; pre-attaching a non-removable, bidirectional valve, further comprising a drainage lumen and a valve control lumen, to the proximal end of an axially elongate tube, wherein the axially elongate tube comprises a

Art Unit: 3761

proximal end, a distal end, and a drainage lumen extending substantially the axial length of the axially elongate tube; inserting a flexible trocar comprising a tapered, blunt distal tip, and a guidewire lumen extending the length of the flexible trocar, through a drainage lumen of the valve, into the proximal end of the axially elongate tube and into the drainage lumen of the axially elongate tube until the tapered distal tip extends beyond the distal end of the axially elongate tube; inserting a distal end of the axially elongate tube, comprising the pre-inserted, blunt flexible trocar and pre-attached bidirectional valve, over the guidewire and through the incision into the thoracic cavity of the patient, wherein the distal end of the axially elongate tube is advanced into the thoracic cavity of the patient; removing the flexible trocar from the drainage lumen of the axially elongate tube and from the drainage lumen of the valve; selectively opening or closing the drainage lumen of the valve, to control the influx and efflux of fluid, air or contaminants into the thoracic cavity through the drainage lumen of the axially elongate tube; and removing the guidewire after inserting the axially elongate tube.

34. A method of draining of fluid, air and contaminants from a thoracic cavity of a mammalian patient comprising: inserting a chest drainage apparatus into a thoracic cavity of a mammalian patient, wherein the chest drainage apparatus comprises an axially elongate tube with a pre-inserted flexible trocar having a tapered, blunt distal tip, further wherein the flexible trocar is pre-inserted through a pre-attached, non-removable, bidirectional valve, attached to a proximal end of the axially elongate tube, and through a drainage lumen of the axially elongate tube and extends substantially the length of the axially elongate tube; advancing the chest drainage apparatus to its target location within the thoracic cavity; removing the flexible trocar from the drainage lumen of the valve and the axially elongate tube; and selectively opening or closing the valve to

Art Unit: 3761

control influx and efflux of fluid, air or contaminants into the thoracic cavity through the drainage lumen of the axially elongate tube. _____

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand
Examiner
Art Unit 3761

July 31, 2007

